IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

CRL.A.No. 21 of 2007(C)

SC.688/2004 of ADDL.SESSIONS COURT, (ADHOC), ERNAKULAM
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APPELLANT:

XAVIER @ SOURU,
C.NO.5474, CENTRAL PRISON,
VIYYUR

BY ADV. ARUL KUMAR P[STATE BRIEF]

RESPONDENTS:

STATE OF KERALA REP. BY
THE C.I. OF POLICE,
PERUMBAVOOR.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MUHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10/07/2007,THE COURT ON SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO.21OF 2007

Dated this the 10th day of July, 2007.

JUDGMENT

The appellant, who is the accused in S.C.No.688/2004 on the file of the Additional Sessions Judge (Adhoc-I), Ernakulam, faced trial for the offences punishable under Sections 323, 307 and 498 A of the I.P.C on the allegation that on 20.1.2000 between 8 and 9 p.m, he kicked on the back of PW1, the wife of the appellant, and thereafter he poured kerosene on the body of PW1 and ablazed PW1 by a matchstick and thereby committed the offence. To prove the case against the appellant, prosecution examined 16 witnesses and relied on Exts.P1 to P13. MOs 1 to 6 were also produced. After closing the prosecution evidence, the appellant was questioned under Section 313 of the Code of Criminal Procedure. The appellant totally denied the prosecution case and had stated that he is innocent. No witness was examined but, Ext.D1 was marked on the side of the appellant. After considering the entire evidence, the trial court found the appellant guilty under Sections 307 and 498 A of I.P.C and he was convicted and sentenced him to undergo R.I for three years in each sections and a fine of Rs.5,000/- in each counts and in default of payment of

the fine, S.I for two months in each counts was also ordered. The trial court directed to suffer the substantive sentences concurrently. The benefit under Section 428 of the Cr.P.C was also allowed. That judgment is challenged in this appeal.

2. Since the appeal is filed through the jail authorities, a member from the State brief panel has been appointed to argue the case for the appellant. This Court heard the learned counsel appearing for the appellant as well as the Public Prosecutor. The counsel appearing for the appellant had taken three contentions before this Court. Firstly, the learned counsel submits that the trial court went wrong in believing the evidence of Pws 1 and 2 as the evidence of these witnesses is contradictory in nature. Secondly, it is contended by the counsel that the trial court had committed a serious error in finding the appellant guilty of an offence punishable under Section 307 as the evidence of Pws 11 and 12 do not prove that the injury sustained by PW1 is fatal. Lastly it is contended by the learned counsel that the conviction entered by the trial court under Section 498 A of I.P.C is without any evidence as the prosecution had not proved any evidence of harassment or cruelty as contemplated under Section 498 A of the I.P.C.

3. The question to be decided in this appeal is whether the judgment of the trial court is justifiable or not. The prosecution case is revealed through the evidence of Pws 1 and 2. PW1 is the victim. According to her, the marriage between the appellant and herself was conducted on 13.11.1987 and in that wedlock two children were born. According to this witness, the appellant was having the habit of drinking alcohol and quarreling with her. He used to harass her from the date of her marriage itself. Further this witness has stated that the appellant had the habit of creating troubles with family members and quarreling with the outsiders also. This witness has further stated that on the date of the incident, herself, her children and PW2 went to Aala Yoodasleeha's church and came to their house at about 8 p.m. Immediately the appellant had an altercation with her on seeing that her father came to their house and as her father did not take any steps to get bail for him in a criminal case. The appellant continued the quarrel and he kicked on her back and thereafter while she was sitting on a coat, the appellant fisted her on the back of the body and uttered that even if she was killed, nobody will ask about that. Saying so, he went to the kitchen and took a can which contained kerosene and the appellant poured kerosene on her body. Then he took out a

matchbox and put fire on the body of PW1. On getting fire on the nighty and skirt, PW1 went outside and went to the house of Jayanthi- PW3 and there from she was taken to the Medical Mission Hospital, Kolencherry, where she was examined by PW11. This witness has further stated that she had though stated before the doctor that the fire was from a lamp, subsequently when the police came, she had revealed the fact before the police and thereby F.I. Statement was recorded by the police and a case was already registered against the appellant. The evidence of PW1 has been supported by PW2. PW2 is none else the son of PW1 and the appellant. PW2 at the time of the incident was about 12 years and was studying in the 6th standard and this witness has stated before the court that on the day of the incident when his mother came to the house, the appellant asked about coming of his grand father, the father of PW1, in the house and there was a quarrel between the appellant and PW1. This witness has further stated that he had seen the appellant kicking PW1 and thereafter taking the can which contained kerosene and also pouring the kerosene on the body of PW1. This witness has further stated before the court that after pouring kerosene on the body of PW1, the appellant had set fire to her with a match stick. Immediately on getting fire, PW1 went out

of the house and went to the house of PW3 Jayanthi and there from she was taken to the hospital. This witness has further stated that his grandfather, the father of PW1, accompanied him to go to the hospital and on the way to the hospital he had stated that the appellant had set fire to PW1. The evidence of Pws 1 and 2 is also corroborated with the evidence of Pws 3 and 6 . PW3 is Jayanthi at whose house PW1 had got dressed and took shelter and from where she was taken to the hospital. This witness has also stated that PW1 came to her house and her body was burned. This witness has stated that PW1 had not revealed the fact that the appellant set fire to her. The circumstances under which she was got fire also not spoken by PW1. However this witness understood that the appellant set fire to PW1. The evidence of Pws 1, 2 and 3 along with the evidence of PW6, the father of PW1 would show that PW1 was admitted in the hospital on getting burn injuries. PW11 is the doctor, who had examined PW1 on 20.1.2000 and admitted in the Medical Mission Hospital, Kolencherry. This witness has stated that at about 10.30 p.m he examined PW1 and issued Ext.P5 wound certificate. This witness has further stated that PW1 had a second degree burn injury of 45%. He had also stated that cause of such burn was as alleged. This witness has further stated that he himself has reported the fact

to the police as PW1 had got burn injuries above 30%. This witness has further stated that if any person is having more than 30% burn injuries that injuries would be fatal and he had stated that PW1 was saved only because of timely medical attention. Though this witness was cross examined, the evidence of this witness with regard to the burn injuries sustained by PW1 or the cause of the injuries has not been shaken. Even though a question was put to this witness that the burn injuries found on PW1 could be caused from a flame at a particular distance, he said that generally if it was such a distance, such injuries could not be caused. But this answer by itself is not a reason to discard the evidence of this witness. The evidence of this witness was again fortified by the evidence of PW12 regarding the injury sustained by PW1. PW12 is the plastic surgeon who had treated PW1 and issued Ext.P5 medical certificate. This witness has also stated that burn injury was approximately 45% involving face, chest and upper limbs. This witness has further stated that the injuries would be of alleged homicidal attempt. This witness has also stated that if a person suffers burn injuries more than 30%, that injuries can be fatal. The evidence of this witness would also show that PW1 had sustained injuries as proved by the prosecution. The evidence of PW13 who

had issued Ext.P7 also corroborated the evidence of PW12 regarding the injuries sustained by PW1. Even though an attempt was made to cross examine the witnesses that the injuries caused on PW1 was due to the accident out of lamp but that suggestion by itself was not a reason to disbelief the evidence of PW1 - the injured and PW2 the eye witness to the occurrence. In the circumstances revealed from the evidence of Pws1, 2, 3, 11,12 and 13 it was clearly established by the prosecution that PW1 had sustained a second burn injury of 45 % and the evidence adduced would also show that the appellant poured kerosene on the body of PW1 and had set fire to her body which caused injuries to PW1. The evidence of other witnesses were formal in respect of recovery of the material objects from the scene of occurrence and also the articles seized from the hospital. PW14, 15 and 16 are the investigating officers, who had given evidence before the court that on getting information from the hospital, they recorded the statement from PW1 and registered the crime and after conducting the investigation and on questioning the witnesses a final charge has been filed against the appellant. The trial court relied on the evidence adduced by the prosecution and found that the petitioner was responsible for causing burn injuries on PW1. In the above circumstances, this Court is of the view that

the finding of the trial court is on evidence. Regarding the cause of injuries sustained by PW1, it is proved that the appellant had intentionally caused injuries on PW1 and thereby committed an offence punishable under Section 307 of I.P.C. The next question to be considered in this appeal in the light of the contentions raised by the learned counsel appearing for the petitioner is whether the finding entered by the trial court under Section 498 A of I.P.C is justified or not. The evidence of PW1 would show that the marriage between the appellant and PW1 had taken place about 22 years back and in that wedlock two children including PW2 were also born. Even though PW1 had given some evidence regarding the quarrelsome nature of the appellant after having consumed alcohol, this witness had stated that he used to have quarrel with her and others. The evidence of this witness is not convincing to prove that the appellant used to harass PW1 or was cruel to PW1 as contemplated under Section 498 A of the I.P.C. Apart from the evidence of Pw1, there is evidence of Pws 5 and 6 brother of PW1 with regard to the harassment aspect. Though Pws 5 and 6 have a case that after the marriage of PW1 with the appellant there were frequent quarrels between them, there was no evidence before the court to prove any specific instance of harassment or cruelty has

been meted out by PW1 from the appellant. From the evidence of PW2, the son, it is also not possible to hold that the appellant used to harass PW1. Even though PW1 had stated that on the date of the incident the appellant kicked on her body, but the medical certificate given by PW11 did not show any corresponding injury. The evidence of PW2 in this aspect is also not clear. Even if the appellant had inflicted a kick injury on the body of PW1 on the date of the incident, it cannot be taken as a situation which warrants a conviction under Section 498 A of I.P.C. Apart from the evidence of the relevant witnesses, evidence of the brothers of the appellant and other neighbours examined in this case are also not enough to find that the appellant had committed any offence as punishable under Section 498 A of I.P.C.

In the light of the above findings, this Court is of the view that finding of the trial court that the appellant had committed an offence punishable under Section 498 A is not justified and it is not based on any legally acceptable evidence. Accordingly, that part of the judgment of the trial court is set aside and the conviction and sentence ordered against the appellant under Section 498 A are hereby set aside and the appellant is acquitted thereof from that

charge. Accordingly, the appeal is allowed in part confirming the conviction and sentence awarded against the appellant under Section 307 I.P.C It is also made clear that the appellant is entitled for the benefit under Section 428 of Cr.P.C.

K. THANKAPPAN, JUDGE.

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K. THANKAPPAN, J.

CRL.A.NO. 21 OF 2007

JUDGMENT

10th July, 2007.